

## REMARKS

In the Office Action, the Examiner objected to the drawings. A proposed drawing amendment is included herein and Applicants will submit revised formal drawings upon receiving an indication from the Examiner that the proposed amendments are acceptable. Pursuant to the proposed drawing amendment, Applicants respectfully request that the Examiner's objections to the drawings be withdrawn.

Claims 1-17 and 28-38 are pending in the present application. In the Office Action, claims 1-4, 10-13, 28-31, and 37 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Meyer (U.S. Patent No. 5,541,595) in view of Pollman (U.S. Patent No. 5,233,348) and further in view of Berger (US 2001/0012271). Claims 5-9, 14-17, 32-36, and 38 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Meyer in view of Pollman and Berger, and further in view of Padovani (U.S. Patent No. 6,411,799). The Examiner's rejections are respectfully traversed.

To establish a *prima facie* case that the aforementioned invention is obvious, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. Third, there must be a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appli-

cants' disclosure. Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness.

With regard to claims 1 and 5, Applicants describe and claim, among other things, identifying at least a first plurality of messages indicative of a corresponding first plurality of data transmission rates and a second plurality of messages indicative of a corresponding second plurality of data transmission rates. With regard to claims 10, 14, and 37-38, Applicants describe and claim, among other things, identifying at least a first group of messages having a first plurality of transmit rate request messages and a second group of messages having a second plurality of transmit rate request messages.

Meyer is concerned with decoding compressed image data that has been encoded using a variable length encoding technique. The Examiner admits on page 5 of the Office Action that Meyer does not teach or suggest identifying at least a first and second plurality of messages based on a prior transmitted message and therefore relies on Pollman to teach sending a probability distribution prior to transmission of a message frame. The Examiner also admits at page 4 of the Office Action that neither Meyer nor Pollman teach or suggest that the first and second pluralities of messages are indicative of corresponding pluralities of data transmission rates or that the first and second groups of messages have a first and second plurality of transmit rate request messages, respectively.

The Examiner therefore relies on Berger to teach transmitting a data rate request signal that may be used to transmit data blocks in a network. The Examiner alleges that it would be obvious to combine the data rate request signal described in Berger with Meyer and Pollman to arrive at Applicants' claimed invention. In particular, the Examiner alleges on page 4 of the Office Action that Berger provides motivation to combine the cited references to arrive at

Applicants' claimed invention because Berger teaches that it is desirable to transmit a data rate request signal to change the present rate of data transmission. However, Applicants respectfully submit that the Examiner's assertion that it may be desirable in some instances to transmit a data rate request signal is not sufficient suggestion or motivation to establish a *prima facie* case that the present invention is obvious over the cited references.

The claimed invention as a whole must be considered in any obviousness determination. A mere selection of various bits and pieces of the claimed invention from various sources of prior art does not render a claimed invention obvious unless there is a suggestion or motivation in the prior art for the entirety of claimed invention. Accordingly, in the present case, the cited references must include some suggestion or motivation to modify the variable length image data encoding technique taught by Meyer to include sending a probability distribution prior to transmission of a message frame (*i.e.* a frame including image data), as taught by Pollman. The cited references must also include some suggestion or motivation to further modify the proposed combination of Meyer and Pollman such that the message frame, which Meyer teaches includes only image data, includes information indicative of a data transfer rate.

Applicants respectfully submit that simply asserting that it may be desirable in some instances to transmit a data rate request signal is not sufficient suggestion or motivation to modify the prior art in the manner described above. In particular, Applicants submit that the Examiner has failed to provide sufficient suggestion or motivation for identifying at least a first plurality of messages indicative of a corresponding first plurality of data transmission rates and a second plurality of messages indicative of a corresponding second plurality of data transmission rates, as set forth in claims 1 and 5. Furthermore, Applicants submit that the Examiner has failed to provide sufficient suggestion or motivation for identifying at least a first group of messages

having a first plurality of transmit rate request messages and a second group of messages having a second plurality of transmit rate request messages, as set forth in claims 10, 14, and 37-38.

The Examiner relies on Padovani to teach that a message with fewer bits will be transmitted at lower power than a message with more bits. However, Padovani fails to remedy the aforementioned deficiencies of the other cited references.

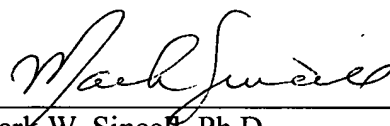
Accordingly, Applicants respectfully submit that the Examiner has failed to make a *prima facie* case that the present invention is obvious in view of the cited references. Applicants request that the Examiner's rejections of Claims 1-17 and 28-38 under 35 U.S.C. § 103(a) be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

Date: \_\_\_\_\_

9/1/04



Mark W. Sincell, Ph.D.  
Reg. No. 52,226  
Williams Morgan & Amerson, P.C.  
10333 Richmond Avenue, Suite 1100  
Houston, TX 77042  
(713) 934-7000  
(713) 934-7011 (Fax)

AGENT FOR APPLICANTS